(6)

No. 94-38

In the Supreme Court of the United States

OCTOBER TERM, 1994

CITY OF EDMONDS, PETITIONER

v.

WASHINGTON STATE BUILDING CODE COUNCIL
AND
UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether a municipal zoning ordinance, which limits the number of unrelated but not the number of related persons who may live together in a single-family residential zone, falls within the Fair Housing Act's exemption for "reasonable * * * restrictions regarding the maximum number of occupants permitted to occupy a dwelling." 42 U.S.C. 3607(b)(1).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases—Continued: Page

Statutes and ordinances:

Miscellaneous: Page

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-30a) is reported at 18 F.3d 802. The opinion of the district court (Pet. App. 1b-13b) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on March 14, 1994. The petition for a writ of certiorari was filed on June 13, 1994 (a Monday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Oxford Houses are group homes for persons recovering from alcoholism or drug addiction. Pet. App. 8a.[1] They operate under rules providing for democratic self-governance, financial self-sufficiency, and immediate expulsion of any resident found to have used alcohol or drugs. *Id.* at 9a; see 42 U.S.C. 300x-25(a)(6) (Supp. IV 1992). Those three basic rules are therapeutically based, and their efficacy has not been contested in this litigation.

The experience of Oxford House, Inc., has shown that eight to twelve residents are generally needed for Oxford Houses to function successfully, and the parties stipulated that Oxford House-Edmonds, the home involved in this case, cannot run effectively with fewer than six residents. Pet. App. 9a, 6b; cf. 42 U.S.C. 300x-25(a)(1) (Supp. IV 1992) (providing federal funding for homes for groups of not less than six recovering substance abusers). A minimum of six residents ensures that any resident experiencing problems related to his or her recovery is likely to find another resident at home to provide emotional support. Pet. App. 9a, 6b. The minimum number of residents needed in a given house also depends on the number of equal shares into which the total household expenses must be divided in order to make the expenses affordable to persons working at or near the minimum wage. *Ibid.*

[1] To facilitate reference to the opinions below, we have numbered the pages of petitioner's appendices consecutively, beginning with the first unnumbered page following each appendix cover page. References to Appendix A (court of appeals opinion) are in the form Pet. App. __a, and references to Appendix B (district court opinion) are in the form Pet. App. __b.

In 1988, Congress amended the Fair Housing Act (FHA) to prohibit discrimination in housing against persons with handicaps. Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, § 6(a) and (b)(1), 102 Stat. 1620-1622. The purpose of the amendment was to "end the unnecessary exclusion of persons with handicaps from the American mainstream." H.R. Rep. No. 711, 100th Cong., 2d Sess. 18 (1988). The amendment applies to persons recovering from alcoholism and drug addiction to the same extent it does to persons with other handicaps, provided those persons are not engaged in "current, illegal use of or addiction to a controlled substance." 42 U.S.C. 3602(h). The amendment makes it unlawful to "discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of * * * that buyer or renter." 42 U.S.C. 3604(f)(1)(A). Prohibited discrimination under the FHA includes "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." 42 U.S.C. 3604(f)(3)(B).

Also in 1988, Congress enacted Section 2036 of Title II of the Anti-Drug Abuse Act of 1988 to encourage the development of Oxford Houses and similar group homes. Pub. L. No. 100-690, 102 Stat. 4202, 42 U.S.C. 300x-4a (repealed), codified in current form at 42 U.S.C. 300x-25 (Supp. IV 1992). The legislation requires States receiving certain federal block grants to make loans to help establish group homes for former substance abusers. It reflects the view that "after detoxification and in-patient rehabilitation many [people] need to live in an alcohol and drug free environment for some time in order to avoid relapse," and that Oxford Houses "provide the kind of support necessary for [these] individuals." 134 Cong.

Rec. E3732 (daily ed. Nov. 10, 1988) (remarks of Rep. Madigan). To qualify for a loan under the Act, a group home must have at least six residents who agree to abide by the three basic Oxford House rules. 42 U.S.C. 300x-25(a)(1) and (6) (Supp. IV 1992). Washington State receives federal block grant funds that subject it to the obligations of Section 300x-25.

2. Oxford House-Edmonds was established pursuant to the Anti-Drug Abuse Act of 1988. It operates under a charter issued by Oxford House, Inc., and it leases a house in Edmonds, Washington. Approximately 10 to 12 persons recovering from alcohol or drug addiction live there as a single housekeeping unit. Pet. App. 8a-10a. The parties stipulated in the district court that the residents of Oxford House-Edmonds are handicapped within the meaning of the FHA. The house is in a residential neighborhood, removed from "commercial zones, liquor stores, and illicit drug activity to minimize the likelihood of a relapse by a resident." *Id.* at 9a. Under petitioner's zoning code, the neighborhood is zoned single-family residential, so that only a "family" may occupy a residential structure in that area. *Id.* at 10a, citing Edmonds Community Development Code (ECDC) § 16.20.010. The zoning code defines "family" as any number of persons related by adoption, marriage or genetics, or five or fewer unrelated persons. EDCD § 21.30.010 (*reproduced at* Pet. 8). Because Oxford House-Edmonds needs six or more people to operate and to qualify for federal funding, it cannot comply with the zoning code's unrelated-persons rule.[2] The parties

[2] Ordinances such as Section 21.30.010 are commonly referred to as "unrelated-persons rules"—a specific type of use restriction—in order to differentiate them from occupancy restrictions. Unrelated-persons rules are aimed at achieving a particular neighborhood character. Occupancy restrictions, on the other hand, control population density within structures to ensure the health and safety of the occupants. See Pet. App. 21a n.4. 27a n.6. Petitioner has adopted the occupancy restrictions of the Uniform Housing Code (UHC). Pet. App. 21a n.4, citing ECDC § 19.10.000. Section 503(b) of the UHC requires that "[e]very dwelling unit shall have at least one room which shall have not less than 120 square feet," that other rooms, including bedrooms, must have an area of at least 70 square feet, and that "[w]here more than two persons occupy a room used for sleeping purposes, the required floor area shall be increased at the rate of 50 square feet for each occupant in excess of two." Pet. App. 21a n.4. Respondents do not contest the applicability of those occupancy restrictions to Oxford House-Edmonds, and there is no question that respondents have fully complied with them.

stipulated, however, that the impact on city services and infrastructure of Oxford House-Edmonds is no different from the impact of an equally numerous group of related persons of the same age at the same location.

3. After learning that an Oxford House had located in Edmonds, petitioner issued criminal citations to the owner and one of the residents of the house for violating the unrelated-persons provision of the zoning code. Pet. App. 10a.[3] Petitioner also sought a declaratory judgment in federal district court that its unrelated-persons rule was exempt from the FHA. *Id.* at 11a. Respondent counterclaimed, seeking declaratory and injunctive relief, damages, and civil penalties based on petitioner's failure to make an accommodation for the Oxford House under Section 804(f)(3)(B) of the FHA, 42 U.S.C. 3604(f)(3)(B). The United States filed a separate action

[3] Petitioner later voluntarily suspended its criminal enforcement actions pending resolution of this litigation. Pet. App. 10a-11a. It refused, however, to make an accommodation so that Oxford House-Edmonds could continue to operate on a permanent basis. *Id.* at 11a.

on the same grounds as contained in the counterclaim, and the two cases were consolidated. Pet. App. 11a-12a.

On cross-motions for summary judgment, the district court granted judgment for petitioner. Pet. App. 1b-13b. The court held that petitioner's unrelated-persons rule was exempt from scrutiny under the FHA as a "reasonable * * * restriction[] regarding the maximum number of occupants permitted to occupy a dwelling." 42 U.S.C. 3607(b)(1). Pet. App. 9b-12b. The court concluded that the "plain language of this exemption" encompassed the unrelated-persons rule and that "[n]othing in the legislative history of the FHA require[d] a different interpretation." *Id.* at 9b-10b. The court also concluded that petitioner's five-person limit was a "reasonable" occupancy limit because it advanced municipal zoning interests. *Id.* at 11b. Finally, it concluded that petitioner "cannot be faulted for exempting related persons" from its five-person limit, because "such a restriction on traditional families would probably violate the Due Process Clause of the Fourteenth Amendment." *Ibid.*

4. The court of appeals reversed. Pet. App. 1a-30a. The court noted first that the FHA should be construed "generously," Pet. App. 13a, citing *Trafficante* v. *Metropolitan Life Ins. Co.*, 409 U.S. 205, 212 (1972), and that the exemptions to the coverage of such a "broad remedial statute" must be read narrowly, Pet. App. 13a, citing *A.H. Phillips, Inc.* v. *Walling*, 324 U.S. 490, 493 (1945). The court held that the ordinance was not clearly covered by the exemption applicable to "restrictions regarding the maximum number of occupants," because although the ordinance restricts the number of unrelated persons who can live together, it "does not regulate the maximum number of related occupants." Pet. App. 17a.

The court of appeals held that the legislative history of the exemption resolved all doubts about whether the challenged ordinance is exempted from the FHA. Pet. App. 18a-21a. It noted that Congress intended Section 3607(b)(1) to exempt only restrictions that apply uniformly to "all occupants," not rules that differentiate between related and unrelated occupants. Pet. App. 19a-21a, citing H.R. Rep. No. 711, *supra*, at 31. The court pointed to petitioner's occupancy restriction requiring that bedrooms have a floor area of at least 70 square feet as an example of a rule that applies to all occupants and that is exempt from the FHA under Section 3607(b)(1). Pet. App. 20a-21a & n.4, citing ECDC § 19.10.000.

The court of appeals concluded that its reading of the exemption was supported by the FHA's purpose "to protect the right of handicapped persons to live in the residence of their choice in the community." Pet. App. 24a, citing H.R. Rep. No. 711, *supra*, at 24. As the court explained,

> [e]xempting Edmonds' ordinance as an occupancy restriction would undermine the purposes of the FHAA. Many cities in this country have adopted similar use restrictions. Applying the exemption would insulate these single-family residential zones from the sweep of FHAA requirements.

Pet. App. 25a (citations omitted).[4] The court held that zoning decisions under ordinances like petitioner's must be subjected to review under the FHA, "or the policies

[4] The court of appeals referred to both the Fair Housing Act and the Fair Housing Amendments Act of 1988 as "FHAA." Except in quotations to the court of appeals' opinion, however, we refer herein to the Act, as amended, as "FHA."

the FHAA seeks to enforce will be frustrated." *Id.* at 26a.

Finally, the court of appeals disagreed with the Eleventh Circuit's application of the exemption in *Elliott* v. *City of Athens*, 960 F.2d 975, cert. denied, 113 S. Ct. 376 (1992). Pet. App. 26a-29a. It rejected *Elliott*'s reasoning that Congress could not have intended to apply the FHA to unrelated-persons rules because such rules are constitutional under *Village of Belle Terre* v. *Boraas*, 416 U.S. 1 (1974). Pet. App. 27a. In the court's view,

> the question is not whether Edmonds' ordinance could withstand a constitutional challenge brought by unrelated persons as in *Belle Terre*. It is whether Congress intended to apply the substantive standards of the FHAA to the ordinance.

Id. at 28a. The FHA's requirements that a city's zoning policies reasonably accommodate handicapped persons can, the court held, exceed the constitutional floor, "requir[ing] something more than the enactment of minimally constitutional and facially neutral zoning ordinances." *Id.* at 29a. The court remanded the case to the district court for evaluation of whether petitioner had complied with the FHA. *Id.* at 29a-30a.

5. On May 17, 1993, after briefing on appeal, Washington State enacted a law that makes the unrelated-persons rule of petitioner's zoning code invalid as applied to a "residential structure occupied by persons with handicaps," such as Oxford House-Edmonds. The new statute, which became effective on July 25, 1993, provides:

> No city may enact or maintain an ordinance, development regulation, zoning regulation or official control, policy, or administrative practice which treats a residential structure occupied by persons with handicaps differently than a similar residential structure occupied by a family or other unrelated individuals. As used in this section, "handicaps" are as defined in the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3602).

Wash. Rev. Code Ann. § 35A.63.240 (West Supp. 1994). The new state statute prevents petitioner from using its single-family zoning ordinance to bar groups of disabled residents from living together as a household unit at Oxford House-Edmonds.

ARGUMENT

Despite the existence of a circuit conflict, this case is not an appropriate vehicle for determining whether petitioner's unrelated-persons rule is a reasonable occupancy restriction exempt from the Fair Housing Act (FHA). After this case was briefed in the Ninth Circuit, Washington State enacted a law that invalidates petitioner's zoning ordinance for reasons independent of the question presented here. Review would also be premature because the Ninth Circuit resolved only the threshold issue of FHA coverage and remanded for a determination of whether any accommodation is, in fact, required by the FHA. In addition, other cases now pending in the lower courts may reach a consensus rejecting *Elliott* v. *City of Athens*, 960 F.2d 975 (11th Cir.), cert. denied, 113 S. Ct. 376 (1992), which is the only reported decision contrary to the court of appeals' correct holding below.

1. The recently enacted Washington Housing Policy Act, see Wash. Rev. Code Ann. § 35A.63.240 (West Supp. 1994), prohibits the enforcement of zoning ordinances such as petitioner's single-family zoning provision against Oxford Houses and similar facilities. The chief practical interest petitioner asserts in favor of review is

that, in its view, the court of appeals' decision prohibits it from engaging in traditional single-family residential zoning. Pet. 18-20, 22-24. The new Washington law, however, prohibits petitioner from enforcing its single-family zoning rule against Oxford House-Edmonds as a matter of state law. Edmonds Community Development Code (ECDC) § 21.30.010 allows a family of more than five persons "related by genetics, adoption, or marriage" to live together in an area zoned single-family residential. It does not allow a household of the same number of unrelated disabled persons, such as Oxford House-Edmonds, in the same area. The ordinance thus "treats a residential structure occupied by persons with handicaps differently than a similar residential structure occupied by a family," and accordingly is invalid under Section 35A.63.240 of the Washington Revised Code. Therefore, even if the decision of the court of appeals were reversed, petitioner would be unable under state law to enforce its zoning ordinance against Oxford House-Edmonds. The question petitioner seeks to present is thus not raised "in the context of meaningful litigation," and its resolution should "await a day when the issue is posed less abstractly." *The Monrosa* v. *Carbon Black Export, Inc.*, 359 U.S. 180, 184 (1959).[5]

[5] Petitioner's contention that "[t]he Ninth Circuit decision in this case would remove the basic zoning block of single family residential zoning," Pet. 22-23, is incorrect. Application of the FHA would not invalidate single-family zoning ordinances or unrelated-persons rules. Rather, it would require localities to make reasonable accommodation for groups of unrelated disabled persons. Moreover, accommodation is not required by the FHA where it would impose an undue burden on a municipality, cf. *School Board of Nassau Courty* v. *Arline*, 480 U.S. 273, 287 n.17 (1987); *Alexander* v. *Choate*, 469 U.S. 287, 299-301 (1985); *Southeastern Community College* v. *Davis*, 442 U.S. 397, 412 (1979), or require it to change the fundamental nature of its zoning scheme, cf. *Davis*, 442 U.S. at 410.

2. Petitioner asserts (Pet. 21-22) that the decision of the court of appeals conflicts with decisions of the Third, Eighth, and Eleventh Circuits. In addition to the Ninth Circuit, however, only the Eleventh Circuit has addressed whether unrelated-persons rules are exempted from review under the FHA, 42 U.S.C. 3607(b)(1).[6] *Elliott* v. *City of Athens*, *supra*, was the first case to decide the issue, and remains the lone appellate opinion applying the exemption to such rules.[7] Several district courts in other jurisdictions have criticized *Elliott*, declined to follow it, and instead adhered to *Edmonds*. See *Oxford House-C* v. *City of St. Louis*, 843 F. Supp 1556, 1573-1575 (E.D. Mo. 1994), appeal docketed, No. 94-1600 (8th Cir.

[6] The FHA exemption was not at issue in either of the other cases cited by petitioner. Pet. 22. The court in *Familystyle of St. Paul, Inc.* v. *City of St. Paul*, 728 F. Supp. 1396 (D. Minn. 1990), aff'd, 923 F.2d 91 (8th Cir. 1991), subjected state and local laws prohibiting placement of group homes for persons who are mentally ill and retarded within 1320 feet of other such homes to FHA review, and upheld the laws as nondiscriminatory efforts to benefit disabled persons by ensuring their integration rather than continued cloistering and ghettoization. The court in *Doe* v. *City of Butler*, 892 F.2d 315 (3d Cir. 1989), held that an ordinance limiting to six the number of residents in transitional dwellings did not discriminate based on sex, but remanded the claim of family-status discrimination to determine whether the ordinance has "a general dampening effect on the ability of women with children to take advantage of transitional dwellings." *Id.* at 324.

[7] There is one unreported district court order citing *Elliott* but not *Edmonds* and granting summary judgment without further analysis in favor of the defendant city. *Elderhaven, Inc.* v. *City of Lubbock*, No. 5:92-CV-136-C (N.D. Tex. June 14, 1994), appeal docketed, No. 94-10648 (5th Cir. July 14, 1994).

Mar. 8, 1994); *Oxford House, Inc.* v. *City of Virginia Beach*, 825 F. Supp. 1251, 1258-1259 (E.D. Va. 1993); see also *Parish of Jefferson* v. *Allied Health Care, Inc.*, Nos. Civ. A. 91-1199, 91-1200 & 91-3959, 1992 WL 142574 (E.D. La. June 10, 1992). The question should await further consideration by the lower courts, see *McCray* v. *New York*, 461 U.S. 961, 962 (1983) (opinion of Stevens, J., respecting the denial of certiorari), in light of the prospect that a satisfactory consensus may emerge and the conflict abate without the need for review by this Court.

3. The procedural posture of this case also counsels against granting the petition. The court of appeals "voice[d] no opinion as to whether [petitioner] complied with the substantive standards of the FHAA." Pet. App. 29a. It instead remanded to the district court for factual findings on the merits, commenting that "[m]any factors must be weighed to determine whether reasonable accommodation under 42 U.S.C. § 3604(f)(3)(B) was achieved." *Ibid.*[8] The additional proceedings below may obviate the need for review. For this reason, this Court's review should be deferred until after final judgment. See *Virginia Military Institute* v. *United States*, 113 S. Ct. 2431 (1993) (opinion of Scalia, J., respecting the denial of certiorari); *Brotherhood of Locomotive Firemen & Enginemen* v. *Bangor & A.R.R.*, 389 U.S. 327, 328 (1967) (per curiam). Petitioner would not be "preclude[d] * * * from raising the same

[8] As noted, Section 35A.63.240 of the Washington Revised Code was not enacted until after briefing on appeal, and the Ninth Circuit's opinion below does not address it. Although the new state law effectively makes injunctive relief unnecessary, respondents' claims for declaratory relief, damages, penalties and fees remain for determination on remand.

issues in a later petition, after final judgment has been rendered." *Virginia Military Institute*, 113 S. Ct. at 2432 (opinion of Scalia, J., respecting the denial of certiorari).

4. At all events, the court of appeals' decision is correct. Petitioner argues (Pet. ii) that its unrelated-persons rule is exempt from the requirements of the FHA as a "reasonable * * * restriction[] regarding the maximum number of occupants" under 42 U.S.C. 3607(b)(1). As the court of appeals noted, however, ECDC § 21.30.010 is not what is commonly referred to as an "occupancy" restriction, but rather is a "use" restriction. Pet. App. 17a n.3, 21a n.4. See note 2, *supra*. By its terms the FHA exemption applies only to occupancy restrictions.

The House Report on the Fair Housing Amendments Act of 1988 confirms Congress's intent not to exempt unrelated-persons rules. Pet. App. 18a-21a. As the court of appeals noted, the House Report describes the exemption as covering only occupancy restrictions that apply equally to "all occupants." *Id.* at 20a.[9] Petitioner's

[9] The House Report explains:

> *Section 6(d)* amends Section 807 to make additional exemptions relating to the familial status provisions. These provisions are not intended to limit the applicability of any reasonable local, State, or Federal restrictions on the maximum number of occupants permitted to occupy a dwelling unit. A number of jurisdictions limit the number of occupants per unit based on a minimum number of square feet in the unit or the sleeping areas of the unit. Reasonable limitations by governments would be allowed to continue, as long as they were applied to *all occupants*, and did not operate to discriminate on the basis of race, color, religion, sex, national origin, handicap or familial status.

requirements of 70 square feet for the first two persons occupying a bedroom and 50 square feet for every additional person are such uniformly applicable restrictions. See Pet. App. 21a n.4, citing ECDC § 19.10.000 (incorporating Section 503(b) of the Uniform Housing Code (1988 Edition)). In contrast, ECDC § 21.30.010 does not apply to all occupants, but makes a distinction between related and unrelated persons. The court of appeals thus correctly concluded that "[e]xempting Edmonds' zoning provision [ECDC § 21.30.010] would contravene the [House] Report's directive that exempted restrictions apply to all occupants." Pet. App. 20a. There is no evidence that Congress intended to exempt rules that cap the number of unrelated persons but not the number of related family members who may live in a dwelling.[10]

H.R. Rep. No. 711, *supra*, at 31 (emphasis added in part), quoted in part at Pet. App. 19a-20a.

The House Report describes the exemption as "relating to the familial status provisions." H.R. Rep. No. 711, *supra*, at 31. The impetus for the exemption was to make sure that, notwithstanding the new prohibition of discrimination on the basis of familial status also added in the 1988 Amendments, see Pub. L. No. 100-430, §§ 5(b), 6(b)(1) and (2), 102 Stat. 1620, 1622 (codified at 42 U.S.C. 3602(k), 3604), governments would retain the authority to apply true occupancy restrictions to families. Congress viewed occupancy rules as a circumstance "where limitations on children in housing units may be valid." 133 Cong. Rec. 3755 (1987) (remarks of Sen. Metzenbaum).

[10] Repeated references in the exemption's legislative history to rules governing health and safety also make clear that Congress intended to exempt occupancy limits and not unrelated-persons rules. The House Report thus refers to the exempted rules as those that "limit the number of occupants per unit based on a minimum number of square feet in the unit or the sleeping areas of the unit." H.R. Rep. No. 711, *supra*, at 31. See 133 Cong. Rec. 3755 (1987) (remarks of Sen. Metzenbaum explaining that "the bill does not prevent governments from imposing safety and health related limitations on the number of persons who may occupy a housing unit"); 134 Cong. Rec. 15,857 (1988) (remarks of Rep. Morella explaining that "[t]his bill respects State and local ordinances regarding the number of occupants per unit and other safety standards").

The court of appeals also recognized that the policy of the FHA would be frustrated by application of the exemption here. Pet. App. 21a-26a. In extending the protections of the FHA in 1988 to persons with handicaps, Congress acknowledged the special need of such persons for group homes and other "congregate living arrangements." H.R. Rep. No. 711, *supra*, at 23-24. Congress sought to prevent municipal "zoning decisions and practices" from excluding persons with handicaps from suitable housing. *Id.* at 24. As the House Report explained, localities had often "restrict[ed] the ability of individuals with handicaps to live in communities" by imposing zoning requirements that either explicitly or in effect excluded such persons. *Ibid.* The court of appeals correctly concluded that because the Amendments were intended "to protect the right of handicapped persons to live in the residence of their choice in the community[,] * * * [e]xempting Edmonds' ordinance as an occupancy restriction would undermine the purposes of the FHAA * * * [and] insulate these single-family residential zones from [its] sweep." Pet. App. 24a-25a.

Petitioner suggests (Pet. 18) that because this Court, as a constitutional matter, has "affirmed a community's ability to limit the number of unrelated adults who may occupy a residence in the single family zone and struck down attempts to regulate by similar definitions

extended familial relationships," zoning rules treating unrelated persons differently from families cannot violate the FHA. See Pet. 24 (referring to unrelated-persons rules as establishing "a distinction based on the line of Supreme Court decisions regarding single family zoning"). The court of appeals properly rejected that argument. Pet. App. 26a-29a (distinguishing *Elliott* v. *City of Athens*, *supra*). The fact that zoning rules that treat families differently from unrelated persons may be constitutional does not establish that they are the type of rules exempted from the requirements of the FHA. The court of appeals recognized that the question here "is not whether Edmonds' ordinance could withstand a constitutional challenge," but "whether Congress intended to apply the substantive standards of the FHAA to the ordinance." Pet. App. 28a. Reasonable accommodation under the FHA "can require something more than the enactment of minimally constitutional and facially neutral zoning ordinances." *Id.* at 29a.[11]

[11] Petitioner suggests, as did the district court, see Pet. App. 11b-12b, that this Court has held that occupancy limits that apply to all residents and seek to prevent overcrowding are unconstitutional. Petitioner is incorrect. Such restrictions, based on health and safety concerns, may be applied to families as well as to unrelated persons. See Pet. App. 27a n.6, citing *Moore* v. *City of East Cleveland*, 431 U.S. 494, 500 n.7 (1977) (opinion of Powell, J.), and *id.* at 520 n.16 (Stevens, J., concurring in the judgment).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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